



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

SSO/157478

PRELIMINARY RECITALS

Pursuant to a petition filed May 05, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on July 09, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency is properly recouping state SSI benefits for the period of October, 2013 – January, 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On January 15, 2014, the federal Social Security Administration (SSA) issued a notice to the Petitioner that he was not eligible to receive SSI payments from October, 2013 – January 31, 2014. On January 23, 2014, the Petitioner filed a reconsideration request with SSA. On May 13, 2014, SSA denied the Petitioner's reconsideration request. On June 2, 2014, the Petitioner filed a request for a hearing with the SSA.

3. On April 24, 2014, the agency issued a Notice of State SSI and/or Caretaker Supplement Overpayment to the Petitioner informing him that, based on a SSA determination, the agency is recouping \$898.95 for the period of October, 2013 through January, 2014 when the SSA determined he was not eligible for SSI.
4. On May 5, 2014, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

Wisconsin law allows the Department of Health and Family Services to recover any incorrectly paid benefits within a year of when the incorrect payment was discovered. It does not matter whose fault caused the incorrect payment. Wis. Admin. Code, § DHS 2.04(1)(a). Overpayments are collected from state SSI or caretaker supplement payments at a rate of 10% of the total overpayment each month. Wis. Admin. Code § DHS 2.04(3). "Incorrectly paid benefits" means that the recipient was not eligible for the benefits during the period they were paid. Wis. Admin. Code § DHS 2.03(5). The petitioner was eligible for state SSI benefits only if he met the requirements of the federal program found in 42 USC 1381 through 1383d. Wis. Stat. § 49.77(2).

The State SSI Unit seeks to recover an overpayment of SSI benefits the petitioner received from October, 2013 through January, 2014 because the SSA determined the Petitioner was not eligible for SSI benefits due to being over the asset limit. The Petitioner disagrees with the SSA and has filed an appeal with that agency. Because the federal SSA determined that he was not eligible for this benefit, it follows that he also was not eligible for the state benefit. Therefore, I must uphold the agency's decision.

CONCLUSIONS OF LAW

Based on the SSA determination that the Petitioner was not eligible for SSI payments due to being over the asset limit for the period of October, 2013 – January, 2014, the state agency properly seeks to recover an overpayment of SSI benefits in the amount of \$898.95 for that period.

THEREFORE, it is

ORDERED

That the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 12th day of September, 2014

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 12, 2014.

Division of Health Care Access and Accountability
State SSI